

RCW 60.04.221 Notice to lender—Withholding of funds. Any lender providing interim or construction financing where there is not a payment bond of at least fifty percent of the amount of construction financing shall observe the following procedures and the rights and liabilities of the lender and potential lien claimant shall be affected as follows:

(1) Any potential lien claimant who has not received a payment within five days after the date required by their contract, invoice, employee benefit plan agreement, or purchase order may within thirty-five days of the date required for payment of the contract, invoice, employee benefit plan agreement, or purchase order, give a notice as provided in subsections (2) and (3) of this section of the sums due and to become due, for which a potential lien claimant may claim a lien under this chapter.

(2) The notice shall be signed by the potential lien claimant or some person authorized to act on his or her behalf.

(3) The notice shall be given in writing to the lender at the office administering the interim or construction financing, with a copy given to the owner and appropriate prime contractor. The notice shall be given by:

(a) Mailing the notice by certified or registered mail to the lender, owner, and appropriate prime contractor; or

(b) Delivering or serving the notice personally and obtaining evidence of delivery in the form of a receipt or other acknowledgment signed by the lender, owner, and appropriate prime contractor, or an affidavit of service.

(4) The notice shall state in substance and effect as follows:

(a) The person, firm, trustee, or corporation filing the notice is entitled to receive contributions to any type of employee benefit plan or has furnished labor, professional services, materials, or equipment for which a lien is given by this chapter.

(b) The name of the prime contractor, common law agent, or construction agent ordering the same.

(c) A common or street address of the real property being improved or the legal description of the real property.

(d) The name, business address, and telephone number of the lien claimant.

The notice to the lender may contain additional information but shall be in substantially the following form:

NOTICE TO REAL PROPERTY LENDER
(Authorized by RCW)

TO:

(Name of Lender)

.

(Administrative Office-Street Address)

.

(City) (State) (Zip)

AND TO:

(Owner)

AND TO:

(Prime Contractor-If Different Than Owner)

.....

(Name of Laborer, Professional,
Materials, or Equipment Supplier)

whose business address is, did at the property located
at

(Check appropriate box) () perform labor () furnish professional
services () provide materials () supply equipment as follows:

.....
.....
.....

which was ordered by

(Name of Person)

whose address was stated to be.
.....

The amount owing to the undersigned according to
contract or purchase order for labor, supplies, or equipment
(as above mentioned) is the sum of Dollars
(\$). Said sums became due and owing as of

.....

(State Date)

.....,

You are hereby required to withhold from any future
draws on existing construction financing which has been made
on the subject property (to the extent there remain
undisbursed funds) the sum of Dollars
(\$).

IMPORTANT

Failure to comply with the requirements of this notice may subject the
lender to a whole or partial compromise of any priority lien interest
it may have pursuant to RCW 60.04.226.

DATE:

By:

Its:

(5) After the receipt of the notice, the lender shall withhold
from the next and subsequent draws the amount claimed to be due as
stated in the notice. Alternatively, the lender may obtain from the
prime contractor or borrower a payment bond for the benefit of the
potential lien claimant in an amount sufficient to cover the amount
stated in the potential lien claimant's notice. The lender shall be
obligated to withhold amounts only to the extent that sufficient
interim or construction financing funds remain undisbursed as of the
date the lender receives the notice.

(6) Sums so withheld shall not be disbursed by the lender, except
by the written agreement of the potential lien claimant, owner, and
prime contractor in such form as may be prescribed by the lender, or
the order of a court of competent jurisdiction.

(7) In the event a lender fails to abide by the provisions of *subsections (4) and (5) of this section, then the mortgage, deed of trust, or other encumbrance securing the lender shall be subordinated to the lien of the potential lien claimant to the extent of the interim or construction financing wrongfully disbursed, but in no event more than the amount stated in the notice plus costs as fixed by the court, including reasonable attorneys' fees.

(8) Any potential lien claimant shall be liable for any loss, cost, or expense, including reasonable attorneys' fees and statutory costs, to a party injured thereby arising out of any unjust, excessive, or premature notice filed under purported authority of this section. "Notice" as used in this subsection does not include notice given by a potential lien claimant of the right to claim liens under this chapter where no actual claim is made.

(9)(a) Any owner of real property subject to a notice to real property lender under this section, or the contractor, subcontractor, lender, or lien claimant who believes the claim that underlies the notice is frivolous and made without reasonable cause, or is clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order commanding the potential lien claimant who issued the notice to the real property lender to appear before the court at a time no earlier than six nor later than fifteen days from the date of service of the application and order on the potential lien claimant, and show cause, if any he or she has, why the notice to real property lender should not be declared void. The motion shall state the grounds upon which relief is asked and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(b) The order shall clearly state that if the potential lien claimant fails to appear at the time and place noted, the notice to lender shall be declared void and that the potential lien claimant issuing the notice shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(c) The clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars.

(d) If, following a hearing on the matter, the court determines that the claim upon which the notice to real property lender is based is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order declaring the notice to real property lender void if frivolous and made without reasonable cause, or reducing the amount stated in the notice if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the person who issued the notice. If the court determines that the claim underlying the notice to real property lender is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the issuer of the notice to be paid by the applicant.

(e) Proceedings under this subsection shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1992 c 126 § 13; 1991 c 281 § 22.]

***Reviser's note:** The reference to subsections (4) and (5) of this section appears to be erroneous. Engrossed Senate Bill No. 6441

changed the subsection numbers. Subsections (4) and (5) are now subsections (5) and (6).